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APPLICATION NO.	FIL	ING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/626,351	07/24/2003		Michael Russell	2502695-991100	1688
28213	7590	06/15/2006		EXAMINER	
DLA PIPE 4365 EXEC		CK GRAY CARY	GUCKER, STEPHEN		
SUITE 1100		- · -		ART UNIT	PAPER NUMBER
SAN DIEGO	O, CA 921	121-2133		1649	

DATE MAILED: 06/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)					
	10/626,351	RUSSELL ET AL.					
Office Action Summary	Examiner	Art Unit					
	Stephen Gucker	1649					
- The MAILING DATE of this communication app Period for Reply	ears on the cover sheet with the c	correspondence address –					
A SHORTENED STATUTORY PERIOD FOR REPLY WHICHEVER IS LONGER, FROM THE MAILING DA - Extensions of time may be available under the provisions of 37 CFR 1.13 after SIX (6) MONTHS from the mailing date of this communication. - If NO period for reply is specified above, the maximum statutory period w - Failure to reply within the set or extended period for reply will, by statute, Any reply received by the Office later than three months after the mailing earned patent term adjustment. See 37 CFR 1.704(b).	ATE OF THIS COMMUNICATION 16(a). In no event, however, may a reply be tirg 11 apply and will expire SIX (6) MONTHS from cause the application to become ABANDONE	N. The mailing date of this communication. ED (35 U.S.C. § 133).					
Status							
1) Responsive to communication(s) filed on 16 Fe	ebruary 2005.						
	action is non-final.						
,	Since this application is in condition for allowance except for formal matters, prosecution as to the merits is						
closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.							
Disposition of Claims		·					
4) Claim(s) 1-35 is/are pending in the application.							
4a) Of the above claim(s) is/are withdrawn from consideration.							
5) Claim(s) is/are allowed.							
6) ☐ Claim(s) is/are rejected.							
7) Claim(s) is/are objected to.	7) Claim(s) is/are objected to.						
8) Claim(s) <u>1-35</u> are subject to restriction and/or e	election requirement.						
Application Papers							
9) The specification is objected to by the Examine	r.						
10) The drawing(s) filed on is/are: a) acce	epted or b) objected to by the	Examiner.					
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).							
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).							
11)☐ The oath or declaration is objected to by the Ex	aminer. Note the attached Office	Action or form PTO-152.					
Priority under 35 U.S.C. § 119							
12) Acknowledgment is made of a claim for foreign a) All b) Some * c) None of:	priority under 35 U.S.C. § 119(a)-(d) or (f).					
1. Certified copies of the priority documents have been received.							
Certified copies of the priority documents have been received in Application No							
3. Copies of the certified copies of the priority documents have been received in this National Stage							
application from the International Bureau (PCT Rule 17.2(a)).							
* See the attached detailed Office action for a list of the certified copies not received.							
Attachment(s)							
1) Notice of References Cited (PTO-892)	4) Interview Summary Paper No(s)/Mail D						
2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date		Patent Application (PTO-152)					

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Election/Restrictions

The Restriction to one of the following inventions is required under 35 U.S.C.
 121:

- I. Claims 1-16 and 34-35 drawn to a composition comprising a non-toxic lectin and a therapeutic agent, classified in classes 436 and 530, subclasses 827 and 396, respectively, for example.
- II. Claims 17-33 drawn to a method for treating a neurological condition, classified in class 514 and subclasses 2 and 12 for example.
- 2. Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product. See MPEP § 806.05(h). In the instant case, Invention I can be used diagnostically to trace neuronal pathways that may be damaged by stroke or injury. Alternately, the process of Invention II can be practiced with the use of non-lectin transporting entities, such as transferrin, or by the use of liposomes.
- 3. This application contains claims directed to the following patentably distinct species: claims 3 (if Invention I is elected) and 21 (if Invention II is elected): SEQ ID NO:1, SEQ ID NO:2, and SEQ ID NO:3. The species are independent or distinct because they have different amino acid sequences.

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Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claim 1 is generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species.

MPEP § 809.02(a).

4. This application contains claims directed to the following patentably distinct species: claims 4 (if Invention I is elected) and 22 (if Invention II is elected): polypeptide, polynucleotide, and compound. The species are independent or distinct because they have different chemical structures and belong to different classes of biochemical products.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claim 1 is generic.

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Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species.

MPEP § 809.02(a).

5. This application contains claims directed to the following patentably distinct species: claims 5 (if Invention I is elected) and 23 (if Invention II is elected): growth factor, hormone, antibody, and cytokine. The species are independent or distinct because they have different chemical structures (amino acid sequences) and belong to different classes of biochemical products.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claim 1 is generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim

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is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species.

MPEP § 809.02(a).

6. This application contains claims directed to the following patentably distinct species: claim 8 (if Invention I is elected) and 26 (if Invention II is elected): CNTF, GDNF, BDNF, IGF1, CT1, TGF β 2, EGF, FGF, VEGF, and interferon α . The species are independent or distinct because they have different chemical structures (amino acid sequences) and belong to different classes of biochemical products.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claim 1 is generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations

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of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species.

MPEP § 809.02(a).

- 7. Because these inventions are distinct for the reasons given above, and because the search and examination of these groups are different because they involve separate searches in both the patent and non-patent literature, restriction for examination purposes as indicated is proper because the search and examination of these groups is different and would pose an undue burden to the examiner.
- 8. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.1741).
- 9. The examiner has required restriction between product and process claims.

 Where applicant elects claims directed to the product, and the product claims are subsequently found allowable, withdrawn process claims that depend from or otherwise require all the limitations of the allowable product claim will be considered for rejoinder.

 All claims directed a nonelected process invention must require all the limitations of an allowable product claim for that process invention to be rejoined.

In the event of rejoinder, the requirement for restriction between the product claims and the rejoined process claims will be withdrawn, and the rejoined process claims will be fully examined for patentability in accordance with 37 CFR 1.104. Thus, to be allowable, the rejoined claims must meet all criteria for patentability including the requirements of 35 U.S.C. 101, 102, 103 and 112. Until all claims to the elected product are found allowable, an otherwise proper restriction requirement between product

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claims and process claims may be maintained. Withdrawn process claims that are not commensurate in scope with an allowable product claim will not be rejoined. See MPEP § 821.04(b). Additionally, in order to retain the right to rejoinder in accordance with the above policy, applicant is advised that the process claims should be amended during prosecution to require the limitations of the product claims. **Failure to do so may result in a loss of the right to rejoinder**. Further, note that the prohibition against double patenting rejections of 35 U.S.C. 121 does not apply where the restriction requirement is withdrawn by the examiner before the patent issues. See MPEP § 804.01.

10. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technical Center 1600 general number which is (571) 272-1600.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen Gucker whose telephone number is (571) 272-0883. The examiner can normally be reached on Monday to Friday from 0930 to 1800. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Janet Andres, can be reached at (571) 272-0867. The fax phone number for this Group is currently (571) 273-8300.

Stephen Gucker

June 13, 2006

JANEY ANDRES
SUPER CONTRACTOR EXAMINER